IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13280 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MUKDASHUSEN ANWARHUSEN SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 13280 of 2003

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MS MITA PANCHAL Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 08/10/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed

against him by the Police Commissioner, Ahmedabad city on 15.3.2003 under the exercise of powers under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The grounds served upon the petitioner and placed on record reveal that the detaining authority relied upon seven offences registered against the petitioner under sec. 379 of IPC for the theft of two wheelers vehicles. The detaining authority also relied upon two in-camera statements as recorded by the sponsoring authority on 8.3.2003 and verified by the detaining authority on 12.3.2003 revealing the incidents of 12.2.2003 and 20.12.2002. From the above material, the order impugned came to be passed by the detaining authority.

Heard ld. advocate Ms. DR Kachhavah for the petitioner and ld. AGP Ms. Panchal for the respondents were heard at length. Affidavit in reply filed by the detaining authority which is placed on record, is also taken into consideration.

Out of various contentions raised on behalf of the petitioner and controverted by ld. AGP, it appears that the matter can be disposed of on the ground that whether subjective satisfaction of the detaining authority as to disturbance of the public order is vitiated or not. From the seven cases registered against the petitioner, it clearly appears that those cases are registered under sec. 379 of IPC for the theft of two wheelers vehicles. The facts of the registration of the offences, it cannot be said to be disturbing the pubic order. While going through the statements recorded by the sponsoring authority, it clearly appears that both the incidents narrated by the witnesses were individual quarrels picked up by the petitioner instead of large sections of the society was involved and affected by the activity of the petitioner. The degree and extent of the each of the alleged activity to fall within the meaning prejudicial to the maintenance of public order, the activity must be of such a nature that travel beyond the capacity of the ordinary law to deal with the detenu or to prevent his activity affecting the community at large or society. It is the degree of disturbance and its impact upon the tempo of life of the society of the people of locality determines whether the disturbance

caused by such activity amounts only to a breach of law and order or it amounts to breach of public order. Having regard to the totality of the facts and circumstances emerging from the material placed before the detaining authority, it clearly appears that the activities even is taken on the face value could hardly be said to be prejudicial to the public order. The detaining authority vide his affidavit in reply in para-6 has justified the passing of the order that the activity was prejudicial to the maintenance of the public order. On going through as aforesaid, the material, at the most, it could be said that the activities of the petitioner could be taken care of by maintenance of law and order instead of labelled as disturbance of public order. The subjective satisfaction of the detaining authority is, therefore, vitiated and the order impugned is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 15.3.20033 by the Police Commissioner, Ahmedabad city under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)
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